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25 *Lead Plaintiff and the Class*

26 *(additional counsel on Exhibit A)*

27 **UNITED STATES BANKRUPTCY COURT**
28 **NORTHERN DISTRICT OF CALIFORNIA**
29 **SAN FRANCISCO DIVISION**

30 In re:

31 PG&E CORPORATION

32 - and -

33 PACIFIC GAS AND ELECTRIC
34 COMPANY,

35 Debtors.

- 36 Affects Both Debtors
37 Affects PG&E Corporation
38 Affects Pacific Gas and Electric Company

39 Case No. 19-30088 (DM) (Lead Case)
40 Chapter 11
41 (Jointly Administered)

42 **PERA'S MEMORANDUM OF POINTS
43 AND AUTHORITIES IN SUPPORT OF
44 MOTION FOR APPOINTMENT AS LEAD
45 PLAINTIFF AND APPROVAL OF
46 SELECTION OF LEAD COUNSEL**

47 Date: January 9, 2024
48 Time: 10:00 a.m. (PT)
49 Before: (Telephonic Appearances Only)
50 United States Bankruptcy Court
51 Courtroom 17, 16th Floor
52 San Francisco, California 94102

53 **Objection Deadline:** December 26, 2023, 4:00
54 PM (PT)

Claimant Public Employees Retirement Association of New Mexico (“**PERA**”), the court-appointed lead plaintiff in the securities class action captioned as *In re PG&E Corporation Securities Litigation*, Case No. 18-03509 (the “**Securities Action**”) pending in the U.S. District Court for the Northern District of California, hereby submits this motion (the “**Motion**”) for entry of an order, pursuant to this Court’s prior determination to apply Rule 7023 to the Proposed Class (defined below) in the Chapter 11 Cases (defined below), 11 U.S.C. § 105(a), and Rule 9014(a) and (c) of the Federal Rules of Bankruptcy Procedure, substantially in the form submitted herewith as

Exhibit C:

- Appointing PERA as Lead Plaintiff to represent the Proposed Class in these Chapter 11 proceedings (the “**Chapter 11 Cases**”)¹; and
 - Approving PERA’s selection of counsel, Labaton Sucharow LLP (“**Labaton**”), as Lead Counsel.²

INTRODUCTION

Now that the Court has determined that Rule 23 should apply, a lead plaintiff should be appointed to protect the interests of the Proposed Class.³

In its oral ruling granting PERA’s motion, this Court already determined that PERA has made at least a *prima facie* showing that Rule 23(a) is satisfied. Sept. 12, 2023 Hr’g Tr. at 8:11–19 (“It does appear to me, on the face of PERA’s motion, that at least the prerequisites of Rule 7023(a) will be satisfied.”).

Accordingly, PERA respectfully requests that the Court appoint it as Lead Plaintiff and approve its selection of Labaton as Lead Counsel.

¹ The proposed class includes all securities claimants with unresolved Rescission or Damage Claims classified as Classes 9A, 10A-II, and 10B (the “**Securities Claimants**” and their claims the “**Securities Claims**”) who purchased or otherwise acquired the publicly traded debt or equity securities of PG&E Corporation, Pacific Gas and Electric Company, or both, from April 29, 2015 through November 15, 2018 (inclusive), and who timely submitted Securities Claims (the “**Proposed Class**”).

² See FRCP 23(g)(3) (“The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.”).

³ Herein, “[a]ll discussion about FRCP 23 and FRBP 7023 will be referred to as ‘Rule 23.’” *Teran v. Navient Solutions, LLC (In re Teran)*, 649 B.R. 794, 800 n.2 (Bankr. N.D. Cal. 2023).

ARGUMENT

The adequacy and typicality requirements of Rule 23(a) “focus on the desired attributes of the class’s representative.”¹ Newberg & Rubenstein on Class Actions § 3:28 (6th ed. Nov. 2023 Update). As set forth below, the Court already determined that PERA and Labaton satisfy these requirements.⁴

A. The Court Already Determined that Typicality Is Satisfied

Under Rule 23(a)(3)'s "permissive standards" for typicality, "representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same conduct." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011).

Here, the Court already determined that PERA has satisfied the typicality requirement. Sept. 12, 2023 Hrg Tr. at 10:16-19 (“As to whether the claims or defenses of the representative parties are typical of the claims, I also agree that [PERA’s] share the same question of law and fact, common to the class.”). Moreover, the proof of claim form approved by this Court on February 27, 2020 for Securities Claims has as its bases the structure and allegations of PERA’s class action complaint. See ECF Nos. 5943, 5943-3.⁵

Since the claims that PERA asserts are based on the same legal theories and arise “from the same event or practice or course of conduct that gives rise to the claims of other class members,”

⁴ The other two Rule 23(a) requirements, numerosity and commonality, “identify the characteristics of a class that make representative litigation appropriate, namely that many individuals share common legal or factual questions.” 1 Newberg & Rubenstein on Class Actions § 3:28 (6th ed. Nov. 2023 Update). The Court also determined those requirements are satisfied here. See Sept. 12, 2023 Hr’g Tr. at 9:7-9 (“As to numerosity, I agree that the number of claimants in the proposed class is so numerous that joinder of the members would be impractical.”); *id.* at 10:1-2 (“As to commonality, I agree that this element appears satisfied.”).

⁵ Exhibit D submitted herewith lists the 27 Securities Claimants of which PERA is aware that affirmatively adopted PERA's class action complaint pursuant to the Court's Order Authorizing Amendment and Objection Procedures for Securities Claims. See ECF No. 13934; ECF No. 13934-1 ¶4. PERA and Labaton do not seek to represent the Securities Claimants represented by Rolnick Kramer Sadighi LLP or any other Securities Claimants that have retained their own counsel and seek to proceed individually with respect to their Securities Claim.

1 typicality is satisfied. *See* 1 Newberg & Rubenstein On Class Actions § 3:29 (6th ed. Nov. 2023
2 Update); *see also id.* (“The test for typicality is not demanding.”).

3 **B. The Court Already Determined that Adequacy Is Satisfied**

4 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the
5 interests of the class.” Fed. R. Civ. P. 23(a)(4). The test for adequacy of representation for the class
6 is two-pronged: “(1) do the named plaintiffs and their counsel have any conflicts of interest with
7 other class members and (2) will the named plaintiffs and their counsel prosecute the action
8 vigorously on behalf of the class?” *Ellis*, 657 F.3d at 985.

9 Here, the Court already determined that PERA and Labaton “will adequately represent the
10 class.” Sept. 12, 2023 Hr’g Tr. at 10:24–25; *see also id.* at 11:1–4.

11 PERA has the sophistication and resources to effectively litigate this matter and supervise
12 counsel. PERA was established in 1947 and manages a retirement system for state, county, and
13 municipal employees including police, firefighters, judges, magistrates, legislators and volunteer
14 firefighters. PERA oversees assets of \$16.7 billion on behalf of its members, retirees, and
15 beneficiaries. PERA understands the fiduciary duties attendant upon a lead plaintiff and is willing to
16 provide testimony at deposition and trial, if necessary.

17 Labaton is highly-qualified, with significant experience in prosecuting securities class
18 actions and has excelled as lead counsel in numerous landmark securities class actions throughout
19 the United States on behalf of defrauded investors. For example, Labaton served as a lead counsel
20 in *In re American International Group, Inc. Securities Litigation*, No. 04-cv-8141 (S.D.N.Y.), in
21 which it achieved a recovery totaling more than \$1 billion for injured investors. *See also In re*
22 *Countrywide Fin. Corp. Sec. Litig.*, No. 07-cv-5295 (C.D. Cal.) (\$624 million recovery); *In re Bear*
23 *Stearns Cos., Inc. Secs., Derivative, & ERISA Litig.*, No. 08-md-1963 (S.D.N.Y.) (\$294.9 million
24 recovery). Furthermore, Labaton has retained the qualified, experienced, and capable bankruptcy
25 counsel of Lowenstein Sandler LLP, whose expertise is well known to this Court.⁶

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27 ⁶ In addition, the Proposed Order provides that Lead Counsel may associate with additional counsel,
28 such as bankruptcy counsel, counsel for special groups of Securities Claimants, as well as other
specialized counsel.

As the Court is aware, PERA and Labaton have demonstrated their willingness and ability to serve as Lead Plaintiff and Lead Counsel on behalf of the Proposed Class in these Chapter 11 Cases since their commencement, through plan confirmation and throughout the post-confirmation period to date. Indeed, PERA, through its counsel, has already been determined to have made a substantial contribution to the Chapter 11 Cases. PERA's and Labaton's substantial involvement demonstrates they have been and continue to be willing to commit considerable resources to representing the interests of the Proposed Class. Moreover, the District Court has already determined that the appointment of PERA and Labaton as its counsel was appropriate in the Securities Actions. There is no reason to doubt they will continue to do so on behalf of the Proposed Class.

Thus, adequacy is also satisfied.

CONCLUSION

For the foregoing reasons, the Court should appoint PERA as Lead Plaintiff and approve PERA's selection of Labaton as Lead Counsel.

Dated: December 8, 2023

Respectfully submitted,

LABATON SUCHAROW LLP

By: /s/ Thomas A. Dubbs
Thomas A. Dubbs (*pro hac vice*)
*Lead Counsel to Securities Lead
Plaintiff and the Class*

- and -

MICHELSON LAW GROUP

Local Bankruptcy Counsel to Securities Lead Plaintiff and the Class

- and -

LOWENSTEIN SAMPLER LLP

Special Bankruptcy Counsel to Securities Lead Plaintiff and the Class

- and -

1 **WAGSTAFFE, VON LOEWENFELDT, BUSCH**
2 **& RADWICK, LLP**

3 *Liaison Counsel for the Class*

4 - and -

5 **ROBBINS GELLER RUDMAN & DOWD LLP**

6 *Counsel for the Securities Act Plaintiffs*

7 - and -

8 **VANOVERBEKE, MICHAUD & TIMMONY,**
9 **P.C.**

10 *Additional Counsel for the Securities Act Plaintiffs*

EXHIBIT B

RESERVATION OF RIGHTS

PERA, on behalf of itself and the putative class in the Securities Action, do not, and will not impliedly, consent to this Court's adjudication of the claims asserted against any Non-Debtor Defendants now or hereafter named in the Securities Action.

1 **EXHIBIT C**

2 **PROPOSED ORDER**

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*Special Bankruptcy Counsel to Securities
Lead Plaintiff and the Class*

(additional counsel on Exhibit A)

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

Case No. 19-30088 (DM) (Lead Case)

PG&E CORPORATION

Chapter 11

= and =

(Jointly Administered)

PACIFIC GAS AND ELECTRIC COMPANY

**[PROPOSED] ORDER GRANTING
PERA'S MOTION FOR APPOINTMENT
AS LEAD PLAINTIFF AND APPROVAL
OF SELECTION OF LEAD COUNSEL**

Upon the motion, dated December 8, 2023, of PERA¹ for entry of an order, pursuant to the prior determination of this Court to apply Rule 7023 to the Securities Claims, 11 U.S.C. § 105(a) and Rules 9014(a) and (c) of the Federal Rules of Bankruptcy Procedure; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, the Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges, General Order 24 (N.D. Cal.), and Bankruptcy Local Rule 5011-1(a); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found and determined that notice of the Motion was reasonable and sufficient, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and held a hearing to consider the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is appropriate under the circumstances; and upon the record of all of the proceedings had on the Motion before this Court, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
 2. The Court hereby finds that the factors enumerated in Federal Rule of Civil Procedure 23(a)(3)-(4) are preliminarily satisfied as set forth in the Court's September 12, 2023 oral ruling;
 3. PERA is appointed Lead Plaintiff to represent the Proposed Class of Securities Claimants; and
 4. PERA's selection of counsel, Labaton Sucharow LLP, is approved as Lead Counsel.

** END OF ORDER **

²⁸ ¹ Capitalized terms used but not defined herein have the meanings given thereto in the Motion.

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2 **EXHIBIT D**
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LIST OF AMENDED SECURITIES CLAIMS ADOPTING PERA COMPLAINT

	Securities Claimant	Amended Claim No.	Previous Claim No.
1	Northern Funds Claimants	110034	100372
2	Vanguard Claimants	110033	Various
3	Northern Trust Funds Claimants	110032	101014
4	Dimensional Claimants	110031	99838
5	Vanguard Claimants	110030	Various
6	Dimensional Claimants	110029	99436
7	Southern Nevada Culinary and Bartender Pension Trust Fund	110028	101957
8	Minnesota State Board of Investment	110027	101117
9	Minnesota State Board of Investment	110026	101042
10	New York City Retirement Systems	110024	108353 99838
11	Iowa Public Employees' Retirement System	110022	100198
12	Lehigh County Employee Pension Board	110021	100243
13	Iowa Public Employees' Retirement System	110020	100147
14	Lehigh County Employee Pension Board	110019	100268
15	Lehigh County Employee Pension Board	110018	100243
16	New York City Retirement Systems	110017	108352
17	California Public Employees' Retirement System	110016	101607
18	California Public Employees' Retirement System	110015	102265
19	City of Austin Employees' Retirement System	110014	101047
20	Louisiana Sheriffs Pension & Relief Fund	110013	100740
21	abrdn Global Infrastructure Income Fund (successor to MacQuarie Global Infrastructure Return Fund)	110012	99311 100321
22	The Johnson & Johnson Pension and Savings Plan Master Trust	110011	101506
23	The Johnson & Johnson Pension and Savings Plan Master Trust	110010	101852
24	Central States, Southeast and Southwest Areas Pension Fund	110004	102263
25	Central States, Southeast and Southwest Areas Pension Fund	110003	102288
26	San Francisco City & County Employees' Retirement System	ECF. No. 14068	101127
27	San Francisco City & County Employees' Retirement System	ECF. No. 14068	101140
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